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In the Supreme Court of the United States

OCTOBER TERM, 1957

THE IVANHOE IRRIGATION DISTRICT, et al., *Plaintiffs and Appellants,* vs. ALL PARTIES AND PERSONS, etc., *Defendants and Appellees.*	No. 122
THE MADERA IRRIGATION DISTRICT, et al., *Plaintiffs and Appellants,* vs. ALL PARTIES AND PERSONS, etc., *Defendants and Appellees.*	No. 123
THE MADERA IRRIGATION DISTRICT, et al., *Defendants and Appellants,* vs. PHILLIP and JANE E. ALBONICO, *Plaintiffs and Appellees.*	No. 124
THE SANTA BARBARA COUNTY WATER AGENCY, et al., *Plaintiffs and Appellants,* vs. ALL PARTIES AND PERSONS, etc., *Defendants and Appellees.*	No. 125

On Appeal from the Supreme Court of the State of California

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Reply to Memorandum for the United States as Amicus Curiae in Support of Jurisdiction

On Appeal from the Supreme Court of the State of California

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In the Supreme Court of the United States

OCTOBER TERM, 1956

THE IVANHOE IRRIGATION DISTRICT, et al., *Plaintiffs and Appellants,* vs. ALL PARTIES AND PERSONS, etc., *Defendants and Appellees.*	No. 993
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Reply to Memorandum for the United States as Amicus Curiae in Support of Jurisdiction

On Appeal from the Supreme Court of the State of California

Appellees file this reply to the Solicitor General, the discussion under the numbered topics below answering the corresponding divisions of his memorandum.

I. The Importance of the Decisions of the Supreme Court of California Does Not Establish the Existence of a Substantial Federal Question.

Appellees, in their motion to dismiss the appeals and supporting brief, did not minimize the importance of these cases in confirming the integrity of California water law and in holding that state-created agencies lack the power, under the statutes and constitution of California, to enter into contracts, such as those presently involved, unauthorized by that law. Appellees' position in this regard was correctly noted by appellants' brief opposing our motion to dismiss (p. 13). But the importance of a decision under state law manifestly does not generate a question for review by this Court. The Solicitor General does not in terms argue that it does.

Counsel for the Bureau of Reclamation appeared as *amici curiae* in the Superior Court in the *Ivanhoe* case, as the memorandum notes (p. 3). No appearance or presentation was made by the United States or any of its officers at the trial of the other three cases. Of the three irrigation district contracts involved, the trial courts held the Ivanhoe and Madera contracts invalid, on the basis of extensive findings of fact and conclusions of law. (Appellees' Motion to Dismiss Appeals and Supporting Brief, p. 8.) Some three or more years elapsed between the entry of the trial courts' judgments and the decisions of the Supreme Court of California. During this period, the Federal Government was not heard from. Only after the State Supreme Court had decided the cases, in January 1957, did the Government reappear, this time in the name of the United States as *amicus curiae* in support of the petitions for rehearing. Its offer to the court below at that stage to "explain and clarify" the issues, including one matter which it then discovered

to be "of great constitutional importance", was duly declined.

The Government's record in these cases is suggestive of the "strange transaction" respecting California waters in which this Court found it had engaged in *United States v. Gerlach Live Stock Co.*, 339 U.S. 725 at pp. 741-742. Certainly the Government's long period of silence while these cases were before the California courts does not add persuasiveness to its present plea for review by this Court. The inference arises, we submit, that during this extended period the Government failed to participate because it deliberately—and correctly—recognized that the issues involved are essentially matters of state law.

II. The Contracts Were Held Invalid Under California Law; No Substantial Federal Question Is Presented.

The Solicitor General's memorandum under its Division II adds little, if anything, to the argument presented by him in support of the petitions for rehearing below. No attempt is made to analyze the opinions of the Supreme Court of California or to meet in detail our showing that the decisions rest on an adequate state ground.

Although referring to the *Gerlach* case, *supra* (Memorandum, p. 4), the Solicitor General does not mention Section 8 of the Reclamation Act, which carefully confirms the integrity of state water law. (See our Motion to Dismiss Appeals and Supporting Brief, pp. 13, 18, 19-20.) The claim of "discrimination" against the United States (Memorandum, p. 4) is both undocumented and unwarranted. Reference is made in this connection to water rights acquired by the United States by purchase and condemnation. Is it now contended that such rights were not acquired under congressional authorization, in implementation of the Cen-

tral Valley Project? In the *Gerlach* case, this Court held that such rights were so acquired, and accordingly were subject to Section 8 of the Reclamation Act 339 U.S. at pp. 727-728, 734-736, 741-742.

Clackamas County, Oregon v. McKay, 226 F.2d 343 (D.C. Cir.), certiorari denied, 350 U.S. 904, which is cited at page 4 of the memorandum, involved neither state waters nor the Reclamation Act. That case, which was also cited to the court below, is the second of the no more than two cases referred to in the memorandum.*

Like the Supreme Court of California, however, we may properly decline the Solicitor General's invitation to debate these cases on the basis of federal law. The Government's stated position is "that the provisions of the contracts * * *

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*In view of the reliance placed upon the *Clackamas* case, it is surprising that the memorandum does not cite and discuss other cases, including, for example, *United States v. Burnison*, 339 U.S. 87. Holding that California probate law is controlling as to testamentary dispositions to the United States, the Court there said (pp. 90, 91, 94):

> "We have no doubt that the receipt of gifts, testamentary and non-testamentary, is within the ambit of federal powers. * * * The argument is that every authorized activity of the United States represents an exercise of its governmental power, and that therefore the power to receive property through a will is a governmental power. Since a state cannot interpose 'an obstacle to the effective operation of a federal constitutional power,' the Government argues a state cannot interfere with this power to receive. * * * But the United States' capacity to receive, even though called a 'right' or a 'power,' is not a 'law of the state.' As we have shown in the earlier discussion, that capacity cannot be magically transformed into something that must be enforced." (Footnotes in quotation omitted.)

Again (p. 91):

> The Government's "argument fails to recognize that the state acts upon the power of its domiciliary [irrigation district] to give [contract] and not on the United States' power to receive [contract]."

But we relegate these references to a footnote and do not pursue the point because, as restated in the text which follows above, it seems clear that federal law does not control the instant cases.

are compelled by the federal reclamation law * * *." (Memorandum, p. 3.) Even if it were true that federal law required the inclusion of such provisions in any contract which might be executed, it does not follow that federal law even purports to require the execution of the contract itself. In fact, it is not contended that the contracts themselves are "compelled" by federal law; nor is it contended that irrigation districts, which are state agencies, are "compelled" by federal law to execute the contracts when state law forbids such contracts by state agencies. Any such argument, of course, would be a contradiction in terms. Our jurisprudence does not speak of "compelled consent."

The critical fact, which the Government, like appellants, refuses to face up to, is that the ultimate issue in these cases was simply the validity of certain consensual undertakings; and that they could not and cannot be held valid unless one of the contracting parties, the state agency, has the authority under state law to enter into them.

It is the Supreme Court of California which speaks with final authority on this issue.

CONCLUSION

The motion to dismiss the appeals should be granted.

Respectfully submitted,

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July, 1957.